

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

DONNY HERNANDEZ,

Plaintiff,

vs.

No. 17-cv-127

ALLSTATE INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

COMES NOW, the Defendant Allstate Insurance Company, by and through its undersigned attorneys, Simone, Roberts & Weiss, P.A., by Stephen M. Simone, and hereby files its Notice of Removal and in support thereof state the following:

1. Plaintiff commenced this lawsuit against Allstate by filing his Complaint as Donny Hernandez, Plaintiff v. Allstate Insurance Company, Defendant in the Third Judicial District Court, County of Dona Ana, State of New Mexico, cause No. D-307-CV-2016-02766.

2. Plaintiff's lawsuit is a civil action which alleges, inter alia, that Allstate failed to pay for losses associated with vandalism of Plaintiff's property and that Allstate violated the New Mexico Insurance Code §59A-16-20 in the handling of Plaintiff's claim.

3. Plaintiff asserts that the damages he sustained by tenant's vandalism was "at least \$45,000.00" and further that Plaintiff is entitled to recover attorney's fees pursuant to §39-2-1 and "such attorney's fees would be not less than \$50,000.00."

4. A true and correct copy of all process, pleadings, and orders served upon Allstate relating to this matter are attached hereto as Exhibit A as provided by 28 U.S.C. § 1446(a).

5. On or about January 17, 2017, Plaintiff served Allstate with a copy of the Summons

and Complaint, through the CT Corporation. A copy of the service of Process Transmittal is attached as part of Exhibit A. Aside from the material in Exhibit A, Allstate is not aware of any other process, pleadings, or orders served upon Allstate in this action .

6. Allstate files this Notice of Removal within thirty (30) days of Allstate's receipt of Plaintiff's Complaint and it is therefore timely under 28 U.S.C. § 1446(b).

7. Venue of this removal is proper under 28 U.S.C. § 1441(a) because this Court is the United States District Court for the District of New Mexico embracing the place where the state court action is pending.

8. This is a civil action that falls under this Court's original jurisdiction under 28 U.S.C. §1332 (diversity of citizenship) and may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446.

9. At the time the Complaint was filed on January 17, 2017, Plaintiff owned and continues to own real estate in Dona Ana County, State of New Mexico.

10. At the time the Complaint was filed on December 19, 2016, and served on Defendant Allstate on January 17, 2016, Defendant Allstate was and continues to be a corporation organized and existing under the laws of the State of Illinois. Allstate's principal place of business was and continues to be Northbrook, State of Illinois. A corporation is a citizen of the state where it is incorporated and "where it has its principal place of business." 28 U.S.C. § 1332(c)(1). Allstate, thus, was and continues to be a citizen of the State of Illinois.

11. Based on the foregoing, there is diversity of citizenship between Plaintiff and Defendant pursuant to 28 U.S.C. § 1332(a).

12. A District Court has original diversity jurisdiction where "the matter in controversy exceeds the sum or value of \$ 75,000, exclusive of interest and costs...." 28 U.S.C. §

1332(a).

13. The Plaintiff's Complaint alleges damages, but does not allege a specific amount of damages. Where a complaint does not contain dispositive allegations of the amount in controversy, a defendant may determine the jurisdictional amount by the allegations in the underlying complaint. *Id.* at 955; *see also Laughlin v. Kmart Corp.*, 50 F.3d 871, 873 (10th Cir. 1995).

14. A calculation of the amount in controversy may include a reasonable estimate of attorney's fees, as long as a statute permits recovery of such. Plaintiff's allegations of attorney's fees of at least \$50,000.00, and vandalism damages of \$45,000.00 satisfies the amount in controversy. *Miera v. Dairyland Ins. Co.*, 143 F.3d 1337, 1340 (10th Cir. 1998) (citing *Missouri State Life Ins. Co. v. Jones*, 290 U.S. 199, 202 (1933)); *see also* 14AA Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 3712 (3d ed. 2009). The calculation also includes treble damage claims. *See Dairyland*, 143 F.3d at 1340.

15. Based on the foregoing, the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, pursuant to 28 U.S.C. § 1332(a), and, accordingly, meets this Court's jurisdictional requirement.

CONCLUSION

16. This state court action may be removed to this Court by Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) and (b) because (1) this action is a civil action pending within the jurisdiction of the United States District Court for the District of New Mexico; (2) this action is between citizens of different states; and (3) the amount in controversy exceeds \$75,000, exclusive of interest and costs.

17. Pursuant to 28 U.S.C. § 1446(d), written notice of the removal of this action has

been given to Plaintiff's counsel, and a Notice of Filing for Removal has been filed with the Third Judicial District Court, attached hereto as Exhibit B.

WHEREFORE, Defendant Allstate gives notice that this case is removed from the Third Judicial District Court, County of Dona Ana, State of New Mexico, to the United States District Court for the District of New Mexico.

Respectfully submitted,

SIMONE, ROBERTS & WEISS, P.A.

/s/ Stephen M. Simone
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I HEREBY CERTIFY that on the 26th day of January, 2017, a true and correct copy of the foregoing pleading was filed electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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/s/ Stephen M. Simone
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